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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 26th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Thursday, 13 February 1992, at 6.10 p.m.

Chairman: Mr. SOLT (Hungary)

CONTENTS

World Conference on Human Rights (continued)

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-third session (continued)

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* The summary record of the first part of the meeting appears as document E/CN.4/1992/SR.26.

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WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 24) (continued) (E/CN.4/1992/57 and Add.1)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that, in October 1989, he had originally suggested the holding of a World Conference on Human rights because he had felt that the immense changes taking place throughout the world, marked by greater interest in human rights and a shift from confrontation to collaboration, made it important to look closely at the United Nations human rights programme. The 1993 World Conference, decided by the General Assembly in December 1990, would provide an opportunity to reflect upon achievements in the human rights field, consolidate attainments, identify the problems ahead and assess what new directions were desirable, in terms of both machinery and standards. It would also provide an opportunity to identify areas of priority, with the overall objective of making the United Nations system an even more effective tool for the attainment of the high ideals encompassed in the Universal Declaration of Human Rights.

2. Considerable progress had already been made towards a successful World Conference through the work of the Commission in 1991, the recommendations of the relevant expert bodies, the first session of the Preparatory Committee and the resolution adopted by the General Assembly at its most recent session. The Commission's current deliberations were an important stage in the task of realizing the common aspiration for a new momentum to implement human rights in full throughout the world.

3. It was evident that the Commission's deliberations in 1991, and more particularly resolution 1991/30 and its annexed recommendations, provided a sense of direction, of purpose and of focus, and he was confident that the guidance provided by the Commission at its current session would serve the needs of the Preparatory Committee, the regional meetings and the Secretariat in their joint endeavour to give full effect to General Assembly resolutions 45/155 and 46/116.

4. With regard to the venue for the World Conference, the Secretary-General had received a letter from the Minister for Foreign Affairs of Germany, in which the Minister referred to his Government's offer, made in May 1991, to act as host for the 1993 World Conference on Human Rights in Berlin. In the period since its offer had been made, the Government of Germany had examined the preconditions which the United Nations considered indispensable for convening the World Conference on Human Rights in Berlin, taking into account the decision by the German Bundestag to transfer the seat of federal bodies from Bonn to Berlin. The conclusion reached by the Government, after examination of the prerequisites for a host-country agreement, was that, in view of Germany's special situation following unification and Berlin's new status as the capital, the conditions described as essential by the United Nations could not be met. A new conference venue thus seemed necessary. The letter suggested Geneva as the most suitable venue, unless interest was shown by another country.

5. The letter asked the Secretary-General to inform the President of the General Assembly of the Federal Government's investigations, in the context of General Assembly resolution 46/116, into the possibility of fulfilling the

requirements of the host-country agreement, and assured him of the Government's commitment to the goals of the World Conference and its intention to make every effort to ensure the Conference's success.

6. As for the overall preparations for the World Conference, the preparatory process had already developed a clear and workable procedural framework for the Conference and the schedule of preparatory meetings and consultations had been confirmed. Guidance had been provided on the outlines of the agenda and on the source and orientation of studies and documents for the Conference, whether prepared by the Secretariat or by other bodies to which the General Assembly had appealed. The requisite financial and other resources for the Conference had been allocated and a small core of talented people, whose sole responsibility was the World Conference, had been assembled within the Secretariat. Mechanisms for informal consultations with regional groups had been put in place to enhance information sharing. Work was well advanced on much of the substantive material, such as the updates of specific publications, and consultations were nearing the stage at which firm substantive guidance could be given by the second meeting of the Preparatory Committee.

7. A fund for extrabudgetary contributions to facilitate the participation in the World Conference of the least developed countries had been set up, and some States had already contributed generously to the fund in order to ensure truly universal participation in the Conference. While he was aware of the financial constraints affecting many countries, he nevertheless urged all those States in a position to contribute to make a special effort to do so.

8. Progress was being made on the organizational, managerial, intellectual and financial aspects of the Conference because of the generally shared common perceptions of its essence and of its potential to meet the human rights challenges that lay ahead. The Conference had to be action-oriented, and while not ignoring ideals, should be dedicated to finding practical and realistic solutions to problems of substance and process in the international sphere. The Conference was about the full and effective implementation by all States of mutually shared values such as equality and dignity, fairness and justice and the effective integration of human rights and democracy into the development process. It was about the holism and indivisibility of human rights, about national institutions and about the means and methods of making international human rights standards part of the common stock of everyday life, in the relationship between individual human beings and the authorities to which they were subject. It was also about the institutional capacity of the United Nations to promote and protect human rights and the measures that could be taken to strengthen and rationalize the Organization in the years to come.

9. However, the Conference would have to do more than simply reflect and take stock. The enormous opportunities that currently existed to promote the cause of human rights made it vital that the Conference should reassert dedication to action and take advantage of those opportunities, before they were swept away by the force of circumstances or the chance of events. The Conference would be a forum for senior statesmen and stateswomen to come together from all over the world to ensure that human rights were in the

forefront of the global public agenda, in a spirit of cooperation rather than of confrontation. The legitimacy of international concern for human rights had become so firmly established that the World Conference should provide a springboard for solutions, and develop responses to the apparently intractable problems that gave rise to human rights abuses. It should make the most of creative opportunities for progress towards the goals of the Universal Declaration and towards a world in which human rights, democracy and development constituted a universal reality.

10. Mr. BAUM (Germany) said he wished to underline the importance attached by his Government to the World Conference on Human Rights. Before adding some elements of particular significance for his Government to those developed by the delegation of Portugal on behalf of the European Community, he had a few words to say regarding his Government's decision, transmitted to the Secretary-General of the United Nations on 12 February 1992, on the venue for the World Conference on Human Rights. His Government had been deeply honoured that the General Assembly had decided to convene the Conference in Berlin. The decision, which had been taken after very careful deliberation, was a matter of deep regret, attributable to Germany's particular situation, and he hoped it would be properly understood. He was nevertheless confident of the success of the Conference, to which his Government would contribute in every possible way.

11. The idea of a World Conference on Human Rights, to reaffirm solemnly the commitment of the States Members of the United Nations to the standards enshrined in the Universal Declaration of Human Rights, and the International Covenants on Human Rights had emerged in the second half of the 1980s, as the world underwent tremendous changes, which the Under-Secretary-General for Human Rights had aptly described as a peaceful worldwide human rights revolution. His delegation urged all countries to continue peacefully that revolution in a spirit of cooperation and solidarity, with the World Conference as a decisive step in their efforts on behalf of the individual, who was at the heart of all human rights policy.

12. Worldwide promotion and strengthening of human rights were essential elements of Germany's foreign policy and were reflected in the provisions of its Constitution, which were binding on all State organs - a reflection of the dark chapters of National Socialism and of the regime which had collapsed on 9 November 1989, which made the maintenance of a high standard of human rights especially incumbent upon the country.

13. His Government was guided by the conviction that lasting improvement in relations among States would be possible only if the international protection of human rights was further developed in an increasingly interdependent world, where the repercussions of violations in any one country were felt beyond its own boundaries. Human rights violations thus impaired social peace as well as peace among the peoples, as the Minister for Foreign Affairs of Germany had stated in his address to the General Assembly on 25 September 1991, when he had said that sovereignty was limited by the responsibility of States for mankind as a whole and for the survival of Creation.

14. His Government was well aware that human rights policy had to start at home, and remained vigilant to check any incidence of xenophobia or discrimination. Its strict opposition to such phenomena - which was shared by an overwhelming majority of the German population - had been repeatedly set out by Chancellor Kohl, and was the basis of a fundamental consensus among the various political and social forces in Germany regarding the need to uphold and protect human rights.

15. The World Conference on Human Rights in 1993 would mark the forty-fifth anniversary of the Universal Declaration of Human Rights and the twenty-fifth anniversary of the first International Conference on Human Rights in Tehran. When it had proclaimed the Universal Declaration of Human Rights, the United Nations had set an ambitious target, which was the yardstick by which the attainment of human rights should be measured.

16. In spite of the remarkable efforts of the United Nations to build up a network of standards and norms, there were still terrible human rights deficiencies in nearly all parts of the world, and an appalling gap between the values enshrined in the Declaration and the reality of torture, arbitrary executions, disappearances, discrimination and refugees. His Government had noted with attentiveness that new partners, some of which had difficulty in explaining the human rights situation in their own countries, had joined the Commission and even its Bureau. It hoped that their presence would contribute to a better understanding of the necessary changes in human rights policy.

17. Germany would continue to contribute actively to the endeavour to put an end to the terrible events described by the human rights monitoring organizations, to which he paid tribute for their untiring, and irreplaceable efforts on behalf of the victims of human rights violations. However, help often came too late, and his delegation thus viewed with considerable sympathy the Austrian initiative to establish an emergency mechanism of the Commission on Human Rights.

18. The Commission had, from the very beginning, closely followed the project for the World Conference, and he drew particular attention to the first of the recommendations annexed to its resolution 1991/30, namely, that the Preparatory Committee, being guided by a spirit of consensus, should make suggestions aimed at ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues in United Nations forums. Those should also be the governing principles for the World Conference itself.

19. Lastly, he emphasized the need for the World Conference to maintain its particular character and to resist any temptation to duplicate the work of the Commission or of any other regular human rights body. It was the task of the Preparatory Committee to discuss in detail the substance of the Conference, in line with its mandate from the General Assembly, which was basically to assess progress in the human rights field, to identify obstacles to progress and propose means of overcoming them. The World Conference should also consider such earlier suggestions as the establishment of an international court for human rights and the creation of a United Nations high commissioner for human rights, to which it could give new momentum.

20. With regard to monitoring and implementation mechanisms, much needed to be done to respond to the growing desire of many countries to improve their human rights infrastructures. Advisory services not only meant a positive approach towards improving acceptance and recognition of human rights but also had a positive impact on sustainable development. That relationship would constitute the second substantial item of the Conference, a true appreciation of which underlay his Government's intensifed cooperation with Central and Eastern Europe and its assistance to the countries of the third world.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-THIRD SESSION (agenda item 17) (continued) (E/CN.4/1991/2 - E/CN.4/Sub.2/1991/65; E/CN.4/1992/46)

21. Mr. BLACKWELL (United States of America) said that, so long as minorities suffered, the Sub-Commission must regard its task as urgent, and hence, reform was nothing less than a matter of conscience. He commended the Sub-Commission's Chairman, who realized that the new conditions prevailing in the world required the Sub-Commission to adapt, something that was difficult and something that the Chairman could not be expected to do alone.

22. In 1991 the Sub-Commission had produced a 241-page report - some 40 pages longer than in 1990 - containing 39 resolutions and 19 decisions. Some studies, such as the study on the right to a fair trial and Mr. Eide's study on minorities, had been useful and relevant. Others had either been of marginal utility or involved unnecessary detail and effort. The study on human rights and youth had produced useful information, but no further purpose would be served by extending the Special Rapporteur's mandate. Yet other studies had entailed unnecessary and laborious research. The study on treaties between States and indigenous peoples requested Governments and other organizations to submit all records of court cases ever conducted as a result of such treaties. In that instance too, the problem was the length of the study and the amount of unnecessary research, not the subject-matter. More emphasis should be placed on practical solutions to the problems of indigenous peoples.

23. Again, there were too many rapporteurs and too many studies that were extended too many times. It was a waste of resources for the Sub-Commission to produce marginal studies using the outside assistance of expensive consultants to do much of the drafting and research. Nor should resources be expended on country situations, something which turned the Sub-Commission into a junior version of the Commission. The kinds of topics that could obviously be better researched by other United Nations forums were human rights and the environment; ownership of the cultural property of indigenous peoples; the right to housing; and the realization of economic, social and cultural rights. Those issues were certainly important, but it did not fall within the Sub-Commission's mandate to pursue them and to divert needed resources from the real task, namely, the protection of minorities.

24. The Sub-Commission's primary mission was to develop mechanisms to resolve disputes and, just as important, to increase protection of minorities by enhancing respect for and adherence to the rule of law. Such a role was being aggressively played by the Conference on Security and Cooperation in Europe,

and the United Nations must do no less. Whether it was the plight of the Kurds, still suffering from Iraqi Government persecution, or the starvation faced by numerous ethnic groups out of favour with the current Sudanese Government, the tragic fact was that the fate of thousands depended on effective action by the Sub-Commission. The worldwide resurgence of racism and anti-Semitism was added evidence that the work was far from over. Specifically, the Sub-Commission should prepare detailed and realistic recommendations to the Commission on issues relating to minority conflicts, in particular conflicts that had led to violence. The recommendations should take the form of action plans, indicating, for example, under what circumstances mediation or other initiatives should be employed. Civil rights law, race relations law, and laws to protect the disabled, were other issues worth exploring, for they had generally contributed to more tolerant behaviour.

25. His country supported the proposal for a five-day working group on reform prior to the opening of the next Sub-Commission session. It would also support any resolution limiting all Sub-Commission studies to a fixed two-year duration, with provision for a one-year extension, and, beginning in 1995, restricting the number of studies to no more than five at any one time. The original intention had been to make the Sub-Commission the intellectual arm of the Sub-Commission, not an ever-expanding bureaucracy.

26. The present era of great change in the world offered an opportunity for bold thinking and searching insight by independent, committed, impartial members. There could be no neutrality, no diffidence, no procrastination where discrimination was concerned. It was not enough to voice good intentions or produce studies of intrinsic value. It was, above all, a time to act, a time to make a difference: that was what the Sub-Commission must do.

27. Mr. XHANG Yishan (China) said he was appreciative of a number of the achievements by the Sub-Commission at its the forty-third session, as described in the report submitted to the Commission, but urgent problems remained.

28. First, the Sub-Commission should concentrate on its core task, which was to undertake studies and make recommendations to the Commission about the prevention of all forms of discrimination. It had recently been moving away from that aim and duplicating the work of the Commission. In addition, the Sub-Commission was becoming increasingly politicized and the timetable for deliberations on various agenda items was not properly set: much of the time was wasted on reviewing human rights situations in particular countries, whereas important issues such as economic, social and cultural rights and the right to development were not fully discussed.

29. Second, the Sub-Commission's working methods needed to be improved and its efficiency increased. There were still too many reports, and the aspects they covered were far too general. Despite repeated requests by the Commission that Sub-Commission documents and resolutions should be reduced, they continued to increase every year. Third, in its contacts with other treaty committees, the Sub-Commission should avoid exceeding its functions and meddling in others' work and should not export or introduce any irrelevant working methods or procedures.

30. He was compelled to point out that, at the forty-third session of the Sub-Commission, at the instigation of a few members and by secret ballot, a resolution on the "Situation in Tibet" had been adopted by a slender majority. That resolution constituted wanton interference in China's internal affairs, and his delegation hoped that such interference under the pretext of human rights would not be allowed to be repeated at the present session of the Commission.

31. Mr. MALGINOV (Russian Federation) said that over the decades the world community had developed a broadly-based system of universal human rights standards forming an integral part of international law and relations between States. Whether so many different international bodies were needed to secure implementation of those standards and whether duplication could be avoided were matters that called for more detailed discussion to which his delegation was ready to contribute, but it was certain that the effectiveness of the existing bodies largely depended on how scrupulously they adhered to their mandates.

32. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was unique among the international bodies, both on account of the wide range of issues it covered and the independence of its experts. Differing views, some of them quite negative, had none the less been expressed on whether its performance lived up to expectations. Those adverse views were not altogether unjustified. As would be recalled, the attempted anti-constitutional coup d'état in Moscow on 19 August 1991 had coincided with the Sub-Commission's forty-third session. Those taking power had declared a state of emergency in certain regions, banning the activities of political parties, restricting the freedom of the mass media and suspending other fundamental rights. Virtually the whole world had been informed about his country's violation of many of its obligations under the international human rights instruments. Yet, despite the efforts of some members, the Sub-Commission had not been bold enough to speak out and had failed to make an expert appraisal of the situation. Evidently, the principle of the independence of its experts was not always fully observed. Nevertheless, his delegation was grateful to the Chairman of the Sub-Commission and those of its members who had taken a stand: their voices had been heard in Moscow. Thus, when new members of the Sub-Commission were chosen in 1992, the Russian Federation would make its decision not on the basis of citizenship but of the personal qualities of each candidate for appointment as an independent expert of an independent international body.

33. Also in connection with the events of August 1991, his delegation wished to reiterate its support for the idea of establishing an international mechanism to respond to emergency situations involving gross violations of human rights. The matter was ripe for consideration and references to the principle of non-interference in internal affairs could not justify postponing action in that regard. The Austrian proposal for such a mechanism therefore merited further examination at the present session.

34. His delegation supported the Sub-Commission's activities aimed at ensuring respect for human rights in emergency situations, upholding the principle of prosecution of persons guilty of human rights violations,

providing for the compensation of victims of arbitrary conduct and guaranteeing the right to a fair trial. It also attached great importance to protection of the rights of indigenous peoples, a problem that was not easy to resolve in Russia, and therefore welcomed the progress made towards finalizing the draft universal declaration of indigenous rights, as well as the results of the Greenland seminar. The forthcoming International Year for the World's Indigenous People would focus international attention on the problems of indigenous peoples and an important role in that regard belonged to indigenous organizations, whose opinions deserved to be heeded by States.

35. On the whole, his delegation took a positive view of the Sub-Commission's activities, but did not agree with the practice of undertaking studies of no practical benefit. There was room for improvement in the Sub-Commission's agenda and possibly also in its methods of work. In that connection, previous Commission on Human Rights resolutions laid down valuable guidelines for enhancing the work of the Sub-Commission and it was to be hoped that as a result of such improvements the Sub-Commission would become a truly impartial and authoritative element of the international system for the protection of human rights.

36. Ms. HEVESI (Hungary) said that Hungary had always attached particular significance to the Sub-Commission as a body of independent experts. To enhance that independence, it wished to place on record the importance it attached to the introduction of voting by secret ballot by means of suspending rule 59 of the rules of procedure.

37. The Sub-Commission was developing new approaches to old problems, as was illustrated by Mr. Eide's report on facilitating solutions to problems involving minorities (E/CN.4/Sub.2/1991/43). Hungary welcomed the renewal of the Special Rapporteur's mandate, as well as the authorization given to the Special Rapporteur to visit three States in different continents where minority problems occurred. It also noted with interest the idea of convening a technical meeting of experts on minorities in 1992, as requested by the Sub-Commission in resolution 1991/22. The Sub-Commission had also made a valuable contribution to focusing attention on the issue of states of emergency, as examined in Mr. Despouy's report (E/CN.4/Sub.2/1991/28).

38. Despite its valuable work, however, the Sub-Commission had not been able to resist the temptation of considering matters which fell within the competence of other United Nations forums. That took time and energy away from issues within its mandate that needed more elaboration. It was a promising sign that the Sub-Commission itself seemed aware that a change was required in its methods of work. Hungary was closely following the activities of the working group on reform and giving serious consideration to the idea of setting up an inter-sessional working group of the Sub-Commission.

39. Mr. OYARCE (Chile) said that the Sub-Commission had for many years expressed concern at the human rights situation in Chile, especially with regard to the fundamental rights of its indigenous populations. With the advent of democracy, Chile had begun a national reconciliation process in which the original peoples of the Chilean nation were participating fully. The process was threefold: first, Chilean society had to change its attitude

towards the existence and the future of the indigenous populations. Second, indigenous populations were being encouraged to participate directly in the treatment of all issues affecting them. Third, efforts were being made to establish the requisite legal instruments and administrative agreements to take account of the fundamental concerns of the indigenous communities. The Government, in consultation with the indigenous communities, had established the Special Commission on Indigenous Peoples, in which representatives of the indigenous peoples took part and it was aimed at promoting indigenous peoples' economic and social development, preserving, strengthening and disseminating their cultural values and guaranteeing their participation and influence in the national community. In addition, International Labour Organisation Convention No. 169 had been sent to Parliament for approval, and a bill, recently prepared after direct negotiations between the Government and the indigenous communities, involved a proposal for constitutional reform leading to explicit recognition of indigenous peoples in Chile's Constitution.

40. His Government was also participating in the various bodies of the international system that dealt with the subject. The establishment of the Sub-Commission's Working Group on Indigenous Populations had begun a process of reflection and analysis which, together with contributions from the indigenous peoples, Governments and non-governmental organizations, should lead to the elaboration of a draft declaration on the rights of indigenous peoples. His Government attached special importance to the draft declaration, which, although it might well raise some political reservations, could produce constructive solutions. He hoped that the exercise would culminate in the adoption of a document that would complement the Universal Declaration of Human Rights, a sector that had suffered from discrimination and social marginalization.

41. The Sub-Commission had proposed a number of specific activities in connection with the International Year for the World's Indigenous People. The United Nations system should develop a global programme in which every specialized agency would deal with the question of indigenous peoples, in order to foster cooperation through specific projects on behalf of indigenous peoples. His country was prepared to take special steps to that end. In that context, certain actions might be considered, such as (1) designating focal points within Governments and United Nations bodies; (2) identifying areas of special interest to indigenous populations, so as to include them in the concept of sustained development; and (3) encouraging contributions to the voluntary fund for the Year by specific initiatives in matters pertaining to development and technical cooperation. He also endorsed the General Assembly's recommendation that a technical conference should be held with representatives of indigenous people.

42. In addition to the activities proposed for the International Year for the World's Indigenous People, his Government also attached importance to cooperation and training mechanisms in the framework of the United Nations Decade to Combat Racism and Racial Discrimination. Chile would be hosting a seminar on practical experiences in sustainable self-development of indigenous peoples and the environment. The seminar would deal with the economic, developmental and environmental variables involved, and its recommendations

would be submitted to the Conference on Environment and Development. The World Conference on Human Rights would also contribute to an analysis of the topic from a new perspective, in order to redress historical imbalances and social tensions.

43. Mr. RUSSELL (Australia) said that his Government attached importance to the Sub-Commission's work on the rights of indigenous peoples and regarded the elaboration of a draft declaration on the rights of indigenous peoples as a matter of priority. Such a declaration would be an important means of protecting the rights of the approximately 300 million individuals who were among the most vulnerable of the earth's inhabitants, and the international community must move quickly to finalize and adopt it.

44. Substantial progress towards that objective had been made at the ninth session of the Working Group, where a first reading of the text of the preamble and initial three parts of the draft had been completed. That encouraging development should open the way for the draft declaration to be adopted by the Sub-Commission at its forty-fourth session, later in 1992. The Commission would thus be able to consider it at the forty-ninth session, in 1993, which had been designated as the International Year for the World's Indigenous People. His Government therefore supported the Sub-Commission's recommendation that the Working Group on Indigenous Populations should convene for a further 10-day meeting prior to the Sub-Commission's forty-fourth session. Emphasis should be placed on the importance of a continuing substantive input and an involvement by indigenous people in the elaboration of the draft declaration. To meet the indigenous peoples' concern that their ability to contribute would be diminished once the draft had been passed on to the Commission, any future consideration of the draft by a working group of the Commission should be scheduled immediately prior to sessions of the Working Group on Indigenous Populations.

45. As to the issue of the cultural property of indigenous peoples, he was appreciative of the preliminary paper prepared by Mrs. Daes. The matter was one of particular importance to Australian Aboriginal and Torres Strait Islander peoples. Similarly, he welcomed the increasing acceptance by universities, museums and other institutions holding Aboriginal skeletal remains - often taken in highly offensive circumstances - that they should be returned to the custody of the Aboriginal people for burial in accordance with their religious beliefs and customs. International efforts should continue to encourage the return of cultural property to indigenous peoples. The Sub-Commission's recommendation that a comprehensive study should be prepared on the subject of indigenous cultural property none the less called for further thought. The topic might be dealt with in a number of other ways, for example in the context of the work already being done by UNESCO.

46. His delegation reiterated the hope expressed by the Australian Minister for Aboriginal Affairs at the ninth session of the Working Group that the Sub-Commission's study on treaties, agreements and other constructive arrangements between States and indigenous populations would be completed at the earliest possible time. His Government had recently begun a "process of reconciliation": a decade-long programme aimed at transforming relations between Australia's indigenous peoples and the broader community. A document

might well be produced as a result of the process and the Sub-Commission study could help Australia develop ideas on that question. In view of the difficulties reported by the Special Rapporteur in completing a substantive report because of his broader mandate, an initial study based on the original mandate, with a progress report on the new aspect in 1993, would be a useful starting point.

47. The process of reconciliation was a most significant commitment by the Australian Government and people to improving relations between Australia's indigenous peoples and the wider community. It had received the unanimous support of the Australian Parliament and State and Territory Governments and widespread support from Aboriginal and Torres Strait Islander peoples. The process provided a framework for achieving justice and proper recognition for Australia's indigenous peoples and would culminate in the centenary of Australian nationhood on 1 January 2001. The Government had recently announced the appointment of a 25-member Council for Aboriginal Reconciliation, which would oversee the process of reconciliation until the end of the decade. It was made up of 12 Aboriginal, 2 Torres Strait Islander and 11 non-Aboriginal people. Its main task was to promote a deeper understanding by all Australians of the histories, cultures, past dispossession and continuing disadvantage of Aboriginal and Torres Strait Islander peoples, to provide a forum for discussion by all Australians of issues relating to reconciliation, to consult the entire Australian community on whether reconciliation would be advanced by a formal document and to report on the possible nature and content of any such document.

48. It was his hope that the International Year for the World's Indigenous People, in 1993, would play a major role in advancing recognition of the rights of indigenous peoples, who should be closely involved in the planning, implementation and evaluation of projects and structures for the year. It was also essential to ensure that tangible results endured well beyond the year itself. Preparatory activity should be accelerated. It was gratifying that a technical meeting on activities for the year was scheduled to take place soon after the Commission concluded the present session. In addition, his delegation believed that the preparations for the World Conference on Human Rights in 1993 should take account of the Year and that the Conference itself should give due emphasis to the rights of indigenous peoples.

49. Mr. de BRITO CRUZ (Brazil) said that the Sub-Commission's report (E/CN.4/1992/2) contained far more substance than Member States could possibly process with the necessary attention in the limited time allotted to item 17. The experts of the Sub-Commission were to be commended for the energy with which they went about their business, but the Commission must provide them with appropriate and clear directions on the content and amount of work they were expected to carry out. To that end, future sessions might allow more time for discussion of the Sub-Commission's work. The expert advice provided by the Sub-Commission was an important element in ensuring that the Commission's deliberations were well-founded and result-oriented. In addition the experts' independence made for less politicized treatment of human rights issues by the United Nations and helped solve problems before matters were brought to the level of the Commission.

50. At its forty-third session, the Sub-Commission had been able to conclude or make substantial progress in the consideration of some important studies. Protection of minorities lay at the heart of the Sub-Commission's mandate, but had acquired new relevance in view of current developments, especially in Europe, where ethnic tensions had been revived after the collapse of the Soviet and Eastern European systems. Consideration of the new aspects of the problem of racism by the Sub-Commission and other human rights bodies deserved encouragement, and he welcomed in that respect the meeting held jointly by the Sub-Commission and the Committee on the Elimination of Racial Discrimination.

51. While it noted the progress achieved by the Working Group on Indigenous Populations towards completing the first reading of the draft declaration on the rights of indigenous peoples, his delegation would have preferred faster headway. The goal was to place before the Commission a text in which most technical problems were already solved and thus be acceptable to all as a sound basis for work at the intergovernmental level. When the text was submitted to the Commission, a working group should be set up to begin work on the draft without delay. It had rightly been pointed out that there was a need for international standards on indigenous rights to be developed on the basis of the diverse realities of indigenous populations in all regions of the world.

52. As most Member States had emphasized, full compatibility ensured the existing corpus of international law in the field of human rights, as determined by General Assembly resolution 41/120. First, the provisions of the new declaration should not include anything that could be interpreted as detrimental to the enjoyment by indigenous persons of rights they were entitled to as human beings. Second, the new instrument should in no way impair the exercise by other human beings of their own inalienable rights as set forth in the relevant national and international instruments.

53. There were many positive aspects to the latest version of the text. His delegation attached particular importance to the provisions regarding the protection and preservation of the ethnic and cultural identity of indigenous groups, the special relationship that indigenous communities had with their traditional lands, non-discrimination at all levels, and participation in democratic decision-making. Other points, however, would require extensive refinement and clarification if the text were to be transmitted to the Commission as it stood. It was scarcely necessary to repeat the recommendations that Brazil and other States had made regarding the substantive and procedural problems that might ensue from the improper use of concepts that had a very precise and well-established purport in international law, such as "self-determination" and "peoples". Needless to say, Brazil was interested in that standard-setting exercise and stood ready to contribute more actively to the preparation of the new instrument as soon as it was brought before the Commission.

54. Mr. HESSEL (France) said that the Sub-Commission provided irreplaceable information and its initiatives were a source of some of the Commission's most important achievements. Yet the question of the Sub-Commission's working methods arose more urgently every year and the constructive statement by the Sub-Commission's Chairman had indicated that the experts themselves

were determined to improve their working methods by rationalization and simplification. Thus, his delegation believed that the Commission should take a firm decision that an inter-sessional working group of the Sub-Commission should meet to discuss working methods. Such a group would make recommendations on coordination of the Sub-Commission with the Commission and the relevant United Nations bodies: the strengthening of the experts' independence, which had been considerably enhanced by the resolution authorizing voting by secret ballot in connection with country situations; reform of the methods regarding the preparation and duration of studies and, the designation of commentators to facilitate thorough debate and the structure of the agenda. He endorsed the views of the delegations of the United States of America, China, Russia and Hungary in that connection.

55. Again, it was for the Commission to fulfil its responsibilities, and not authorize reports or studies if such a course proved necessary. However, France could not support proposals that would limit the Sub-Commission's mandate by restricting the number of resolutions or reports or stipulating in advance which topics the Sub-Commission was to examine.

56. The question of coordination between the Sub-Commission and United Nations treaty bodies was not a matter of major concern. The treaty bodies retained their ongoing supervisory mandate, whereas the Commission and the Sub-Commission were concerned with improving the capacity of the United Nations to respond to emergency situations. The Sub-Commission should continue to play its original role, and the contacts with the Committee on the Elimination of Racial Discrimination and the Human Rights Committee should serve to dispel any possible doubts. Lastly, he supported the proposal made at the previous meeting that the Chairman of the Sub-Commission should be invited to participate each year in the post-sessional meeting of the Bureau of the Commission.

57. Mr. PETERS (Netherlands) said that the Sub-Commission's forty-third session had been productive and demanding. However, to enable the members adequately to contribute to the work of the United Nations, the work should be restructured. Debates could not bear fruit and decisions could not be taken properly under great pressure of time. The Commission, too, had to set its own priorities and apply standards for the relevance and possible use of studies undertaken by the Sub-Commission.

58. As repeatedly stated in the Commission and as indicated in the report by the Chairman of the Sub-Commission (E/CN.4/1992/46), there was a need for change. His delegation welcomed the decision to assign a separate session of a working group on reform of the methods of work to that issue, even at the costs estimated by the Secretariat. Vague intentions would no longer be acceptable, however, and the Sub-Commission must carefully consider the Commission's guidelines laid down in its resolution 1991/56. The number of studies had to be reduced and lack of "financial implications" could not be used to circumvent the guidelines. Some of the measures mentioned in Mr. Joinet's report, such as the designation of a commentator on studies, merited consideration, while others, such as "self-limitation", might evaporate before long. To foster exchange of thought between the Commission and the Sub-Commission, a standing invitation might be extended to the experts to attend the Commission's discussion when they were in Geneva.

59. As for country situations, the Sub-Commission should confine itself to those situations it could comment on with fresh arguments or insights or with knowledge typical of an expert body. Obviously timetables for processing documents should be met, notably by the experts, and NGOs should be aware of the need to exercise some self-restraint in order not to prolong the debate unduly. Some members' statements might also be rather shorter. The revised voting rules had proved an asset, but States sometimes exerted undue pressure on experts who were their nationals. His Government had never done so, and hoped others had adopted and would adopt a similar attitude towards such an unacceptable practice.

60. In 1991, his delegation had welcomed the revitalization of the Working Group on Contemporary Forms of Slavery and it was gratifying to see the establishment, under General Assembly resolution 46/122, of the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. The Netherlands Government had very recently made a significant contribution to the Fund, and his delegation would be introducing a draft resolution calling for more contributions.

61. The modern world was confronted with new forms of slavery which constituted grave violations of human rights and affected the most vulnerable groups. He welcomed the Working Group's report and the recommendations adopted at the sixteenth session. The Group was right to say that the existing legal instruments should be made more effective. Some organizational changes would make the Group more effective. It would be an improvement if the same chairperson remained in office for a number of sessions, for example. Draft decision 10 of the Sub-Commission, on a session of the Working Group in the month of May, commanded his support and the Secretary-General was to be commended for anticipating approval by the Commission and examining the possibilities for such a session. The treaty monitoring bodies should follow the Commission's recommendations to give particular attention to the implementation of treaty provisions relevant to the combating of contemporary forms of slavery when they examined periodic reports by States parties. Coordination of those and other initiatives throughout the year would certainly be enhanced if the Secretary-General answered the call by the Sub-Commission, the Commission and the Economic and Social Council to make a full-time staff member available for the work. Those and other matters would be addressed in a resolution his delegation would be introducing on the report of the Working Group.

62. The Sub-Commission's Special Rapporteur, Mr. Despouy, was to be praised for taking swift action during the state of emergency in the then-USSR and requesting clarifications from the authorities. The developments had certainly highlighted the practical value of Mr. Despouy's guidelines on the matter. Mrs. Mbonu provided a valuable inventory of relevant aspects of population transfers, rightly including not only situations linked to development projects but also population transfers that were politically motivated. Any comprehensive approach should examine the issue of redress. It was obvious that a simple "re-transfer" of people was not a just solution <u>per se</u>, in particular in cases where a second or third generation had settled in.

63. The use and effectiveness of a charter on the rights and freedoms of youth were of doubtful value. The existing instruments covered that area sufficiently, notably the Convention on the Rights of the Child. As stated in General Assembly resolution 41/120, overlaps must be avoided. It was disappointing to learn that very little time could be assigned to the subject of the right to leave and the right to return to one's country. Those rights were still worth protecting, even though many States had rewritten their statute books; issues like "brain drain" and emigration were topical. The human rights aspects of fraud and corruption were not enough to necessitate a separate study by the Commission. Perhaps the matter could be referred, through the Economic and Social Council, to the newly established Commission on Crime Prevention and Criminal Justice. The progress report on the study concerning the right to restitution for victims of human rights violations was interesting, and he looked forward to the second report, to be submitted to the Sub-Commission at the forty-fourth session. The International Year for the World's Indigenous People was drawing near, and public attention would be drawn to the work of the Working Group chaired by Mrs. Daes. In order to enable indigenous peoples themselves to take part in the work of the Working Group, the Netherlands had recently transferred $15,000 to the voluntary fund.

64. Lastly, his Government was of the opinion that the Sub-Commission could contribute most to the work of the United Nations in the field of human rights if its members were independent experts. It therefore appreciated the practice of circulating the curriculum vitae of candidates for the Sub-Commission. Expertise and independence were two major qualifications for membership, and his delegation would take those into account when casting its vote during the elections later in the session.

65. Mr. MARANTZ (Canada) said that his delegation had reviewed the report on human rights and disability (E/CN.4/Sub.2/1991/31) with enthusiasm. It strongly supported the recommendation that internal legislation should be adapted to international norms and guidelines concerning the treatment of disabled persons and that international monitoring bodies should bear such persons in mind in supervising the specific implementation of the International Covenants on Human Rights. The idea of an ombudsman to protect the human rights of persons with disabilities was a limited means of assessing prolonged discrimination in particular regions, but his delegation nevertheless wished to offer general support for the proposal.

66. The aboriginal peoples of Canada were an important element of Canadian society, and his country naturally supported the endeavours of the Sub-Commission's Working Group on Indigenous Populations. It was pleased with the progress being made in the Working Group on standard-setting, which it attributed in part to the return to a single working group format. It was gratifying to note that all the preambular and 18 out of 28 operative paragraphs of the draft declaration on the rights of indigenous peoples had been addressed. In the light of that progress, he agreed that the Working Group should be provided with an additional, fully-serviced five working days. The Group would need to be given sufficient time for thorough discussion of the complex and difficult issues associated with the draft declaration. The study on treaties, agreements and other constructive

arrangements between States and indigenous populations and the study on the question of ownership and control of the cultural property of indigenous peoples were expected to contribute to an understanding of the principles which indigenous people wished to see incorporated in the Declaration. He hoped to see timely and steady progress on those matters, in parallel with the deliberations of the Working Group. His delegation had also taken note of the report in connection with the meeting of experts to review the experiences of countries in the operation of schemes of interal self-government for indigenous populations, which had been held in Nuuk, Greenland. In view of the attention given to the question of self-determination the report should be retained as a working paper for the next session of the Working Group.

67. As to the forthcoming Year for the World's Indigenous People, Canada was proud to participate in a team that had come together to advance the indigenous agenda for 1993. His delegation would suggest that the preposition in the title should be changed from "for" to "of", so as to remove any inadvertent appearance of condescension. The theme of the year, "Indigenous People - a New Partnership", was universal in meaning and application. In Canada, a new partnership was evolving between indigenous and non-indigenous people. Several of the Government's proposals for constitutional renewal attempted to address the concerns of aboriginal peoples, including the incorporation in the Constitution of a legally enforceable right to self-government. Indigenous people were being encouraged to provide the Government with their views on the proposals, and their four national aboriginal organizations had been given considerable means to consult with their membership on those issues. The Government had established a Royal Commission, composed of a majority of aboriginal persons from the major groups in the country, to examine the economic, social and cultural situation of aboriginal peoples in Canada. The Commission would seek the views across Canada of non-indigenous and aboriginal citizens on establishing new relationships based on dignity, respect and economic independence. In addition to those nationwide processes, there were a myriad of others, some on issues such as economic development or health care, others at regional or community levels. Aboriginal peoples were rapidly being brought into the decision-making ambit of Canada's institutions.

68. The evolving relationships in Canada illustrated how the spirit of the resolution on the International Year could be implemented, in the United Nations system and at the national level among the member countries of the Commission. The initiatives of other bodies such as UNDP, UNICEF and ILO in involving their services with representatives of indigenous peoples were welcome. The technical meeting to be convened in Geneva at the end of the Commission's session must of course, include significant indigenous representation. Many indigenous and non-governmental organizations with an interest in indigenous matters would want to attend, and if they could not, consideration should be given to changing the dates and venue of the meeting. Lastly, his delegation welcomed the designation of the Under-Secretary-General for Human Rights as the Coordinator for the Year for it was entirely consistent with everyone's wish to reinforce the effectiveness of the Commission and the Secretariat in matters pertaining to their mandates.

69. Mr. FLUSS (World Health Organization) said that the World Health Organization had played a major role in stimulating democratic debate and in encouraging Governments to adopt a human rights-based approach to the control of AIDS and the HIV infection. On 13 May 1988, the forty-first World Health Assembly had adopted a resolution calling for all forms of discrimination to be avoided in respect of HIV-infected persons and persons with AIDS. WHO's Executive Board had recently endorsed the revised version of the Global Strategy for the Prevention and Control of AIDS, which had added to the new priorities original 1986 version: an increased emphasis on the adequate and equitable provision of health care; a reduction of the special vulnerability to HIV infection of women and their offspring through improvements of women's health, education, legal status and economic prospects; the creation of a more supportive social environment for AIDS prevention through the removal of legal and other barriers to frank messages about sexual transmission to people's ability to act on such information; and greater focus on effectively communicating the compelling public health rationale for overcoming stigmatization and discrimination.

70. WHO looked forward to continuing close cooperation on the human rights aspects of AIDS with its partners in the United Nations system and other intergovernmental and non-governmental organizations. Specifically, it hoped to reinforce its close cooperation with the Centre for Human Rights and the Special Rapporteur if the Commission endorsed draft decision 11 of the Sub-Commission.

71. AIDS had in just one decade turned into a pandemic affecting millions of men, women and children on all continents. By the year 2000, WHO estimated that cumulative totals of 30 to 40 million men, women and children would have been infected with the HIV virus, while 12 to 80 million would have developed AIDS. AIDS knew no geographical boundaries. It had struck and would continue to strike men, women and children of every race, colour, religion and class.

72. Ms. DUNCAN (Observer for New Zealand) said that, from the inception of the Working Group on Indigenous Populations, New Zealand had believed that the process initiated in New Zealand in the light of promises made 152 years earlier in the Treaty of Waitangi were relevant to the Working Group's proceedings. Thus it followed those proceedings closely and made a modest contribution to the voluntary fund for indigenous populations. The adoption by the international community of the declaration of the rights of indigenous peoples would close one of the few remaining gaps in the framework of international human rights norms. In view of the progress made by the Working Group at its ninth session, New Zealand supported the request that the Group should meet for 10 fully-serviced days in 1992 in order to complete the second reading of the entire text.

73. As the Group approached the final stages in drafting the declaration, New Zealand had established a steering committee of officials to coordinate advice to the Government on the existing draft text and other matters before the Working Group. The committee, in which all relevant Government departments were represented, would report regularly to ministers on the range of issues considered by the Working Group, including the means for ensuring that any eventual national positions took full account of Maori views. In the

matter of recent steps forward between Maori and the Government as treaty partners, in 1991 Maori had given their endorsement to a new approach to promoting Maori development, especially in the fields of education, training, health and economic resource development. The elements of that approach were now being implemented, and in January a new Ministry of Maori Development had been established, replacing two previous agencies. As the New Zealand Prime Minister had described on the day Commemorating the Treaty of Waitangi, the new Ministry was to work with Maori to design new and effective policies and with other agencies to ensure that services and programmes were well targeted to Maori needs. It would also sponsor pilot projects to test the viability of policies concerning service delivery or programme design. The Prime Minister had also referred to the quickening pace in settling Maori land claims under the Treaty of Waitangi.

74. In connection with the International Year for the World's Indigenous People, which New Zealand supported by its sponsorship of the relevant United Nations resolutions, attention was being given to how New Zealand would mark the Year. Since the Year coincided with 100 years of suffrage for New Zealand women, consideration was being given to appropriate commemorative activities for indigenous women in New Zealand. She also expressed the hope that the World Conference on Human Rights in 1993 would give due emphasis to the rights of indigenous people. Lastly, her Government was pleased that the Chairperson of the Working Group on Indigenous Populations had been able to accept its invitation to visit New Zealand for the second time, in May 1992.

75. Mr. HJELDE (Observer for Norway) said that the ninth session of the Working Group on Indigenous Populations had once again confirmed the Group's significance as an annual focal point for organizations of indigenous peoples, indigenous rights activists and interested scholars. Norway took an active part in the Group's deliberations as an observer and in that context he paid a tribute to its Chairperson for her efforts. The Working Group had also made considerable progress in setting international standards on the rights of indigenous peoples, notably in the form of a draft declaration on the rights of indigenous people. In finalizing its reading of the draft, the Working Group should make an effort to elaborate provisions that would command broad international acceptance.

76. Another initiative of the Sub-Commission had been to proclaim 1993 as International Year for the World's Indigenous People. Concern had been expressed that the Year should not become yet another year of empty words, and his delegation therefore welcomed the adoption by the General Assembly of resolution 46/128, which outlined a programme of activities for the Year and provided for a technical meeting in early 1992. He also hoped that the World Conference on Human Rights and the United Nations Conference on Environment and Development would take proper account of the Year in their activities. Since the Year could only be successful if indigenous peoples participated fully, his Government had already initiated consultations with representatives of the Sami people to consider possible recommendations to the Commission for preparations for the Year. Particular emphasis would be placed on how the Year could be used as a catalyst to improve the situation of indigenous peoples throughout the world in such things as human rights, environment, development, education and health.

77. Mr. CONDORI (Indian Council of South America) said that the 500th anniversary of the so-called "Encounter between two worlds" to be triumphantly celebrated by the European countries, particularly Spain and by the Latin American countries, coincided with the destabilization of the world, the dismantling of an entire economic and social system and a savage awakening of nationalist sentiments that threatened international peace and security. For indigenous peoples and nations, however, the only possible commemoration was that of 500 years of resistance and struggle, first against the colonial system and now against neo-colonialist domination in all its forms. Therefore, 1992 should be commemorated as the international year of mourning for the memory of the millions of Indians who were exterminated and whose age-old languages and very civilization had been destroyed. In that connection, he referred the members to a resolution adopted by the representatives of Indian peoples and nations issued under the symbol E/CN.4/NGO/17, which reflected the just hopes and legitimate claims of the ever-forgotten Indian nations. He hoped that the international community would display its political readiness and support the International Year of Resistance and Struggle of Indigenous Peoples by concrete and effective human rights measures and especially by implementing the universal declaration of the rights of indigenous peoples and nations.

78. In the economic sphere, the most crucial question for indigenous peoples everywhere was the land, which was their source of life and the strength behind their resistance. After 500 years, the market economy, far from resolving the vital problem of land bringing about a genuine land reform, had completely impoverished the indigenous masses. The privatization of strategic sectors of national economies had aggravated external debts at the expense of the poorest, accentuated economic dependence and an undermined national sovereignty. One example among many was Amazonia, 40 per cent of which was owned and operated by American and European companies, according to a report by the Brazilian Institute of the Environment. Before the arrival of the Europeans, the Yanomami Indians in Brazil had numbered 2 million. At the present time, the invasion of their territory by the gold prospectors had caused the death of 15 to 20 per cent of that population. In another region, the hunger strike recently ordered by Bolivian workers and peasants in the Andes was living proof of the resistance to privatization and denationalization of key sectors of the economy and the determined opposition to the transfer of natural reserves to transnationals which destroyed the environment and produced unemployment and the rural exodus of defenceless Indian populations.

79. Furthermore, parliamentary democracies deprived many indigenous populations of the exercise of their fundamental political rights and freedoms. Lastly, he urged the Commission to request a special meeting of the General Assembly on 12 October 1992, with participation by Indian representatives, for the inauguration of the International Year for the World's Indigenous People. He would also appeal to the Governments concerned, including Spain, to accept their moral and political responsibility to redress past injury by returning the Crown of Montezuma and the gold and silver plundered by the colonizers.

80. Mr. AL-DOURI (Iraq), speaking in exercise of the right of reply, said that the sufferings of Kurds in Iraq referred to by the representative of the United States of America had been caused by the intervention of foreign forces, including those of the United States, and by the fact that the Kurdish leaders had had links with those foreign forces since the creation of the modern Iraqi State. Had those links not existed, the Kurds would not have experienced their fate, which his Government regretted. The Iraqi Government had reached nearly total agreement with the Kurdish leaders, whereupon one of the Kurdish leaders, after travelling to Paris, Washington and London, had refused to sign the agreement. The Kurdish leader appeared to have been given instructions not to sign the agreement, the goal being to maintain tensions in order to justify the continuing presence of foreign forces in northern Iraq.

The meeting rose at 9.30 p.m.